BEFORE THE
WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 658

IN THE MATTER OF: Served January 20, 1967

Application of D.C. Transit System, Inc., for Authority to Increase Fares.) Application No. 396

) Docket No. 131

BEFORE EDWARD D. STORM, CHAIRMAN; H. LESTER HOOKER, VICE CHAIRMAN; GEORGE A. AVERY, COMMISSIONER

The Commission has before it a Motion for Reconsideration of Order No. 656 filed by Thomas E. Payne, a party to the proceeding, and certain other individuals, stated to be regular riders of buses operated by D.C. Transit System, Inc. The Motion is filed pursuant to Section 16 of the Compact. */ Under the terms of the Compact, the filing of the Motion acts as a stay of Order No. 656 until the Commission acts on the Motion. We are acting on this Motion promptly to avoid confusion and uncertainty as to the company's fare structure. Our prompt action does not mean that we have not fully considered the arguments put forth by the movants. In the period since the Motion was first tendered for filing and rejected by the Executive Director, the Commission has had the opportunity either to review the Motion papers or to discuss the arguments made therein with members of the staff. We have further considered and discussed the Motion since it

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*/ Washington Metropolitan Area Transit Regulation Compact, 74 Stat. 1031 (1960).

has been officially accepted for filing.

First, we have concluded that the Motion should be denied since the order on which reconsideration was sought is not a final order and the Compact provides that such motions may be made only with regard to final orders. We say that the order is not final because it provides only an interim step in the final disposition of this proceeding. Further hearings are to be held and questions raised in the proceeding are to be further considered before an order making final disposition of the case is entered. We do not limit our consideration of the motion to this ground, however. To give the fullest possible consideration to the movants, we have considered and will discuss the arguments put forward by them.

We consider, first, whether we have power to enter an interim order of the kind entered in this proceeding. We conclude that we are fully empowered so to act. Section 15 of the Compact stated that "The Commission shall have power to . . . make . . . such orders . . . as it may find necessary or appropriate to carry out the provisions of the Act." We have held a series of lengthy hearings and built a record of considerable substance. On the basis of that record, we have concluded that under its present fare structure the company would have a net operating loss in 1967 of $726,033 before interest expenses. Interest costs would add over $1,000,000 in additional loss to the company.

In view of these facts, we have established an interim fare structure which would permit the company to recover its costs and pay its interest expenses. These fares would allow the company an additional return on gross operating revenues over these amounts of only .6%. We indicated in our opinion, and reaffirm here, that, by any standard, the company is entitled to the revenues permitted in our interim order. The broad powers conferred on us by Section 15 of the Compact, quoted above, certainly permit us in these circumstances to enter an order like the one here in question.

Movants raise the question of injury. They claim that, unless the order is stayed, the riders will suffer irreparable harm since the fares, once paid, can never be returned. In fact, should the order ever be reversed, a riders' fund like that established in response to the order of the Court of Appeals in Bebchick v. PUC, 115 U.S. App. D.C. 216, 318 F.2d 187 (1963) could be established. While the fares paid pursuant to the interim order could not be returned to the persons that had actually paid them, the riders as a class would receive the benefit from the amounts paid into the company. Hence, we are not persuaded that the possibility of injury to the movants requires reconsideration or a stay.

On the other hand, it is clear on the record that the company would lose a substantial sum, amounting to thousands of dollars, each day that it must operate under the fare structure which existed prior to Order No. 656. These losses could never

be recouped. Hence, the company does face irreparable injury if the order is stayed, or if interim action were not taken.

Movants make reference to the short period of time allowed between the entry of the order and its effective date. Unless the order were made effective promptly, the possibility of speculation in tokens of the company would arise. In fact, on every occasion in the past when an order has been entered increasing the price of tokens, the order has been made effective very promptly after its issuance. The Commission was doing no more in this instance than following a long history of past practices. As in the past, the timing was proper in the circumstances of this case.

The Motion raises few other matters of substance. Indeed, it contains allegations which are egregiously in error. For instance, the Motion contends that the order was in error because the District of Columbia representative on the Commission failed to be present during the hearings or to consider his right to veto said order. In fact, as even a cursory examination of the record, or the most casual inquiry to the Commission, would have revealed, the District of Columbia representative not only attended every session of the hearing except one,**/ but also participated actively in the examination of witnesses. The District of Columbia representative has also fully considered all rights and powers he has under the Act in connection with the issuance of the order in question.

**/ This was the first session, at which little was done other than the introduction of written material.

The remainder of the contentions in the petition consist of statements in the most general terms that the order is in error. For instance, it is said that the order is "contrary to the evidence and the law", or that "many serious and weighty questions . . . should be brought to the attention of the Commission". No specification of any kind as to the alleged errors is provided. The Commission is not obligated to guess at what the movants feel is wrong with the order. The Compact itself clearly stated that a petition for reconsideration must state "specifically the errors claimed as grounds for such reconsideration." [Emphasis supplied.] Compact, § 16.

In short, the Motion appears to raise no questions of any substance. The Commission has carefully built a record which fully supports the action it has taken. It has refused to go beyond the bare minimum financial requirements of the company until it assures itself on the basis of a record completely satisfactory to it what return should be allowed. The increase granted by the Commission in this order was the first one given since an increase of 1 1/4 cents in the cost of tokens was allowed in April, 1963. The Commission is confident that it is zealously pursuing its responsibility to safeguard the public interest.

The Commission is of the opinion and finds that the Motion for Reconsideration should be denied.

Therefore, IT IS ORDERED:

That the Motion for Reconsideration of Thomas E. Payne, and others, filed in this proceeding on January 20, 1967, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

George A. Avery
Commissioner